

Freedom of Information Act Community Mtg



National FOIA Office
EPA Office of General Counsel

Negotiating with Requesters – May 12, 2022

Denise A. Walker
National FOIA Office
Office of General Counsel

Why is this training important?

- ❖ To help you comply with the FOIA
- ❖ Good customer service
- ❖ To support the Agency's 2022-2026 [Strategic Plan](#)
- ❖ To meet EPA's FOIA commitments in the [Administrator's FOIA memo](#)
 - ❖ transparency
 - ❖ disclosure
 - ❖ cooperation
 - ❖ innovation and improvement
- ❖ To create a clear record & avoid excessive FOIA litigation and attorneys' fees
- ❖ To help decrease your FOIA program's backlog



When is it a Good
Idea to Contact a
Requester?

Communication is key

Below are common communications that may occur:

Clarify Scope of
the request

Increase Fee
Limit / Assurance
of Payment

Extend Due Date

Discuss Search
Terms

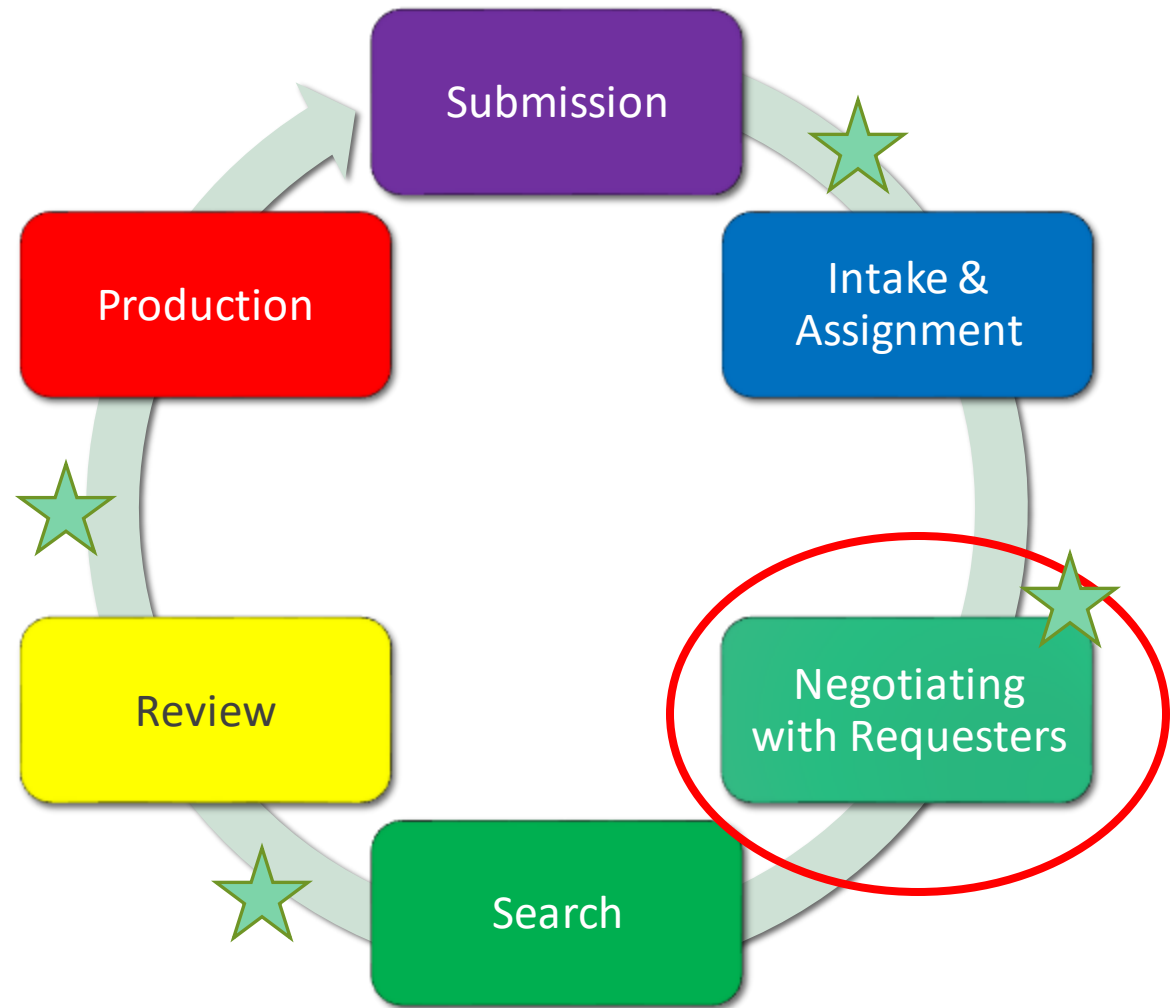
Discuss
Preliminary
Search Results

Status Updates

Interim release
of records

Final release and
close out letter

Lifecycle of a FOIA Request at EPA



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Why Don't We Call Requesters?

It is scary! What if I say the wrong thing?? I don't want to get into trouble!

I don't know what to say. It's easier to just interpret the request myself!

What if they start asking questions??

The 'Why' behind the request

FOIA requesters generally do not have to justify or explain their reasons for making requests.

Exceptions:

- When expedited processing is requested
- When a fee waiver is requested

However, understanding what a requester is looking for can really help!

Negotiating and Documenting a Clarification: Before the Call

- Make sure you're prepared!
- Have a call with your subject matter experts.
- Agree who will lead the call and who will take notes.
- Talk through the information you already have and that you need to find out to conduct a search:
 - Custodians?
 - Search Terms?
 - Record Types and Locations?
 - Time Frame?



What is Active Listening?



Negotiating and Documenting a Clarification: During the Call

Relax. You're prepared.



1. Be attentive:

Make sure everyone is on the call. Introduce yourself and your team with confidence and kindness.

Wait for everyone to join. It's OK to engage in a little innocuous small talk while you wait.

Once everyone arrives: Begin by thanking the requester to take time to talk to you about the request.

Negotiating and Documenting a Clarification: During the call



2. Ask Open Ended Questions and Listen:

“I have your request in front of me, but I’d like to start by letting you explain in your own words what you’re looking for.”

Don’t interrupt until the requester is finished. Encourage the speaker to continue with small verbal comments like yes, and uh huh.



3. Ask Probing Questions:

“Is there a specific document you have in mind?”

“If we were able to provide the perfect document or set of records to you, what would it look like?” “Do you need records by a particular date?”

-Ask any follow-up questions that will help you or the SMEs locate the right records

Negotiating and Documenting a Clarification: During the call

4. Request Clarification:



“Could you clarify what you meant by “related to V-AWESOME?”

5. Paraphrase:



“So let me see if I understand: You’re looking for email records that reflect EPA conversations with outside stakeholders while the agency was developing the V-AWESOME Policy. Is that correct?”

Negotiating and Documenting a Clarification: During the call



6. Be Attuned to and Reflect Feelings:

“It sounds like you’re concerned that we might clarify or put limits on your request in a way that won’t meet your needs. After this call, I’ll send you a letter that will document our conversation today. You will have the opportunity to review it and let us know if we misunderstood something. And, of course, you can always submit more FOIA requests.”

“It sounds like you might be feeling frustrated about the timeline that I proposed, would it help to set up a bi-weekly check in call to update you on our progress?”



7. Summarize:

“You’re looking for the email records and attachments that were sent to and from non-EPA email addresses by the key employees in this office between March 1 and March 31 and we’ll use the search term: “V-AWESOME”.

Negotiating and Documenting a Clarification: During the call



8. Be attentive as you end the call:

Again thank the requester for speaking with you. Let them know they can reach you by phone or email if they have additional questions. Let them know the next steps as applicable:

“Thank you for speaking with us today. I think we have what we need to move forward with the search and collection for your request. We will restart the clock as of today’s date. We’ll send you a letter this afternoon/ Monday/in the next few days that will capture what we talked about today. The letter will also include your (revised fee estimate/ information for a follow-up call/ the estimated date of completion... Etc.)

Is there anything else you need from us at this point?

Again, thank you for your time. We will be in touch soon.

Negotiating and Documenting a Clarification: After the Call

Debrief with anyone else who was on the call with you.

As soon as possible, draft the follow-up letter/ email to the requester.

If the clock was stopped for clarification or fees restart it in FOIAonline.

Let's look at a few example follow-up letters.

The importance of a good administrative record

- ❖ A **good administrative record** tells the story of the request – from cradle to grave.
- ❖ Use **Comments and Correspondence features** in FOIAonline to maintain your administrative record.
- ❖ **Include:**
 - ❖ All communications (phone calls, email, and letters) with requester;
 - ❖ Summary of internal discussions about request, especially decisions regarding interpretation of request, search strategy, withholdings, productions;
 - ❖ Procedural actions and reasoning (e.g., clock stoppage, office reassignment);
 - ❖ Search instructions;
 - ❖ Applied and unapplied versions of redacted and withheld records; and
 - ❖ Any information you think would be helpful to GLO on appeal/litigation.

What if things go sideways??

1. The requester calls you out of the blue and you aren't prepared to talk to them.

→ Tell them you are not available to talk right now but will be happy to schedule a time with them.

2. The requester is hostile, angry, or abusive.

→ Breathe. Be polite and helpful to a point. Please do not tolerate abusive behavior. Do your best to acknowledge their feelings or fears and attempt to resolve the situation. "It sounds like you are upset and frustrated about the possibility of contamination in your community. Can you tell me which records would best assist your community group...?"

If the requester persists with being abusive or hostile, politely let them know you cannot continue the conversation if the behavior continues and you will arrange to speak with them at another time.

"Mr. Angry, if you continue to swear at me, I will be unable to help you. Are you willing to continue the conversation calmly or shall I reschedule/refer you to the FOIA Public Liaison?"

3. The requester asks for something you aren't sure about.

→ It's ok to say that you need to confer with your supervisor/ the NFO /SME and get back to them.

4. The requester asks questions about the work of the agency.

→ In general, refer these questions to the Office of Public Affairs. press@epa.gov

Clarification Call Checklist



1. Be attentive



2. Ask open ended questions and listen



3. Ask probing questions



4. Ask for clarification



5. Summarize



6. Be attuned to and respond to feelings



7. Summarize



8. Be attentive as you wrap up the call with next steps.